IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.773 OF 1992.

The Union of India
Represented by the
General Manager,
Central Railways,
Bombay V.T. : Appellant.

versus

M/s.Kapse Brothers,
295/298, East Mangalwar Peth
Solapur. : Respondent.

Mr.A.N.Samant for the appellants.
Mr.G.S.Godbole for the respondent.

CORAM : D.G.DESHPANDE,J.

DATED : 16th August 2005.

ORAL ORDER

1. By this appeal the Union of India has challenged the order of the Tribunal awarding

compensation to the respondent.

2. Mr.Samant, the learned counsel for the appellants, has raised only two contentions. Firstly, according to him, the Railway Receipt was issued by the Railway as "Said to Contain" basis. Secondly, he contended that the tribunal has awarded interest at the rate of 10% per annum. According to him, it should be 9% per annum.

3. Therefore, he contended that firstly the appeal should be allowed so far as claim on merits is concerned or alternatively that the interest rate should be reduced to 9% per annum.

4. So far as the contention of Mr.Samant regarding RR with the endorsement "Said to Contain" is concerned, the same is required to be rejected. In this case, a consignment of 270 bags of Sooji was despatched from Amritsar under Invoice No.10-W, RR No.942037 dated 6/7.8.1980 to Solapur. At the time of taking delivery on 1.9.80, 211 bags were found damaged by water. The assessment of damage was done jointly by the Railway and the claimant. Heavy damages were

caused to the goods by rain water and 8060 kgs. sooji was found totally damaged. Therefore the claimant has claimed a compensation of Rs.15,591 and odd with interest.

. The Tribunal framed as many as 4 Issues but the Issue regarding RR "Said to contain" was not at all framed. The tribunal found that the damage was due to the negligence of railway authorities.

5. Mr. Samant contended that the railway receipt in this case was to the effect "said to contain" and burden was on the claimant to prove it which he has failed to discharge. I have considered this aspect regarding said to contain RR in number of appeals and have rejected this contention taking into consideration peculiar facts and circumstances of each case. Here the goods were Sooji. Sooji bags were entrusted to the railway for carriage to Solapur. The bags were found damaged. The claim was based on the assessment made. The Railway denied all the contentions of the claimant and alleged that the damaged was caused due to the negligence of the consignor and prayed for dismissal of the suit of

the claimant.

6. As per the railway receipt the railway have charged freight charges for the quantity and quality described in the railway receipt. The claim for damages is not in respect of all the bags mentioned in railway receipt. The damages claimed are in respect of loss of or damages to the part of the goods. And considering the charges levelled it has to be held that the railway has received at least that number of bags which were ultimately found to be damaged. Therefore, even if there is no evidence as to the actual number of bags loaded in wagons and even if the railway receipt mentioned said to contain, the railway cannot be permitted to contend that they did not receive even those number of bags for which the claim is lodged. If they are permitted to raise such plea then it would mean that the railway has issued receipt without receiving any number of bags from the applicant. There is no dispute that the bags were damaged due to rain water. Sooji bags were entrusted to the railway and at the time of delivery they were found to be useless because of the rain water.

No other inference about negligence of the railway can be drawn. It was contended by Mr.Samant that the wagon was water tight. I do not find any substance in this submission. Because nature of damages is due to rain water. It is clear that water has percolated in the wagons which also means that the wagon used for transporting the sooji from one place to another was not water proof and no quality was provided for stopping the leakage of rain water. Even if it is accepted that the wagon was water tight, but it is true that the goods were damaged because proper monsoon precautions were not taken. This is, therefore, clear case of negligence of railway. In view of this the contention of Mr.Samant is required to be rejected.

7. Railways can raise defence of said to contain when railways dispute the quantity entrusted to them and accept the representation of the consignor in that regard for the purpose of freight charges. However, the claim in this case is on the basis of actual Assessment Report, signed by both the parties, and if the actual damage suffered can be ascertained on the basis

of the evidence on record, then question as to how much quantity was entrusted to the railways becomes secondary. The assessment report shows that railways were in a position to make assessment of the damages in respect of the bags, number of bags actually damaged under the invoice. In the circumstances, the defence of said to contain is not available to the appellants.

8. So far as compensation is concerned, as per Assessment Report (Ex.13 D/1), which is jointly signed by the Respondents and Consignee, 211 bags were found in damaged condition at the destination station. The Assessment Report also contains the monetary quantification of the damages suffered by the claimant. Therefore, the tribunal held that even though the applicant has claimed higher compensation for the damages suffered, since the assessment report is a jointly agreed documents, the applicant has suffered damage of Rs.9,885.66 only as agreed by both the parties. The tribunal was justified in awarding the compensation to the claimant.

9. The second contention of Mr.Samant was

that the interest that was awarded by the tribunal at 12% was not proper in view of the judgment of this Court reported in **2005 (1) Mh.L.J.165 Maharashtra State Electricity Board vs. Union of India.** It was a claim against the railways and the interest was awarded ultimately by the High Court at 9% per annum. I had also followed the same judgment earlier. Therefore, in view of this judgment the rate of interested is reduced to 9%. The appeal is required to be partly allowed.

10. Mr.Samant for the appellant states that the appellant has deposited the amount. In the result, I pass the following order:-

:ORDER:

. The Appeal is partly allowed.

. The principal amount awarded will carry interest at the rate of 9% per annum from the date of application up to the date of withdrawal by the claimant of the amount deposited by the railways pursuant to the order of this court or up to the date of investment with proportionate

costs of the tribunal.

. so far as this appeal is concerned, no order as to costs.

[D.G.DESHPANDE]